

October 8, 2002

PUBLIC UTILITIES COMMISSION  
Investigation of Compensation by  
Global NAPs to Verizon and Other  
LECs for interexchange internet traffic  
and Use of NXX Codes by Global NAPs

NOTICE OF INVESTIGATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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## I. SUMMARY

In this proceeding, we will investigate the appropriate compensation scheme between Global NAPs, a carrier in Maine, and Verizon and other local exchange service carriers for traffic destined to the internet that the Commission has found in a prior proceeding to be interexchange. If necessary, we will also investigate the proposed use of multiple NXX codes by Global NAPs for the gathering of that traffic and the jurisdictional nature of the traffic.

## II. BACKGROUND

In March 2002, Global NAPs, an authorized competitive local exchange carrier in the State of Maine, applied to the North American Numbering Plan Administrator (NANPA) for the assignment of a single NXX code assigned to the whole State of Maine. As of this time, that request has been denied by NANPA because Global Naps does not have authority to provide facilities-based local exchange service (or any interexchange service) outside of the Portland exchange.

Global NAPs's request to NANPA raised a number of issues, many of which this Commission addressed and decided in a case involving apparently very similar facts, *Public Utilities Commission, Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Docket No. 98-758, Order Requiring Reclamation Of NXX Codes And Special ISP Rates By ILECs (Order No. 4) (hereinafter, the *Brooks Investigation* or *Brooks Order*).

### A. The Brooks Investigation

As found in the *Brooks Investigation*, Brooks obtained 46 NXX codes from NANPA that it requested NANPA to assign to various rate centers throughout the State. Calls placed to numbers within those codes (primarily if not exclusively by subscribers to internet service providers (ISPs)) were routed to Brooks's switch in Portland and then

were terminated at a customer (an ISP) also located in Portland. Nevertheless, these calls were rated as local calls to the caller (at least if they originated in a Verizon exchange) and as local calls for the purpose of compensation between the carriers (meaning that Verizon had to pay Brooks reciprocal compensation for the calls) because they were placed from exchanges within the “local calling area” of the location to which the codes were nominally assigned. They became “local” calls even though Verizon transported the traffic between exchanges that normally required an interexchange call.

Brooks characterized the service as “FX-like.” Brooks had no customers and no facilities in the locations to which the NXXs had been nominally assigned. We found that the traffic was in fact a foreign exchange (FX) service, and that foreign exchange services definitionally were interexchange in nature (their very purpose is to avoid toll charges for interexchange calls). We also found, based on our definition of interexchange traffic in Chapter 280 of our Rules and the identical definition in the interconnection agreement between Verizon and Brooks, that the traffic was interexchange, not local, that Brooks was obligated to pay access charges on the traffic, and that reciprocal compensation was not applicable. Global NAPs was a party to the *Brooks Investigation* and fully participated in the case.<sup>1</sup>

We also decided, however, that because the traffic was destined for the internet, it was appropriate to order Verizon to develop a retail service for ISPs that would provide lower-priced access for internet traffic. We justified this decision on 35-A M.R.S.A. § 7101(4), which states:

**4. Information access.** The Legislature further declares and finds that computer-based information services and information networks are important economic and educational resources that should be available to all Maine citizens at affordable rates. It is the policy of the State that affordable access to those information services that require a computer and rely on the use of the telecommunications network should be made available in all communities of the State without regard to geographic location.

Verizon responded with a proposed service that has become the service known as Hub-PRI. The Hub-PRI portion of the service that moves interexchange (and some local) traffic to and among some seven “hubs” in the state is flat-rated, as requested by the Commission, to reflect the preferences of the ultimate consumer

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<sup>1</sup> Accordingly, Global NAPs is likely bound under *collateral estoppel* principles by the findings and rulings in the *Brooks Investigation*. No party in *Brooks* questioned the jurisdiction of the Commission over the issues in that case. Global NAPs bases its present argument concerning jurisdiction on an FCC decision in *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, issued after the decisions in the *Brooks Investigation*.

market. It is generally designed to recover Verizon's costs for transporting interexchange internet traffic, but without any contribution to joint and common costs. A subscribing ISP must also pay for local distribution channels, i.e., facilities that connect the hub in which they are located to the ISP's location. Local Distribution Channels are also flat-rated, and their pricing is based on the size of the "pipes" and transport distances.

#### B. Global NAPs Request for NXX Codes; Recent Activities

In March of 2002, Global NAPs applied to the NANPA for an NXX code that would serve the entire state on a "local" basis. Although Global NAPs was aware of the various decisions in the *Brooks Investigation*, it has argued to the NANPA and the Commission that FCC decisions issued since the Orders in the *Brooks Investigation* have ruled that internet traffic is interstate in nature. According to Global NAPs, it follows that the Maine Commission has no authority over either the assignment of NXX codes for traffic destined for the internet or over inter-carrier compensation, including compensation for traffic that is interexchange traffic within a state.

For the past few months, we have used the *Brooks Investigation* as a vehicle for addressing the issues raised by the Global NAPs request and arguments. Global NAPs has participated with the Commission Staff, Verizon, the Telephone Association of Maine and others in informal discussions with the intent to reach some resolution of the issues. It has not been possible to reach a resolution, but Global NAPs has agreed that it will participate in a proceeding before the Commission, even while it reserves its arguments concerning jurisdiction and the Commission's authority over these issues.

The informal process produced some tentative results. Global NAPs has indicated a possible willingness to pay some amount for the delivery of interexchange traffic to its ISP customers. It has continued to indicate that it is willing to use a statewide single code for the gathering of traffic rather than multiple codes.

### **III. THE NEW INVESTIGATION**

Because the present matters result from the actions of a different party, and because the *Brooks Investigation* has essentially no undecided issues that relate to Brooks itself,<sup>2</sup> we decide (and the parties who were participating in this matter in the *Brooks* case have agreed) that we should commence a new, independent investigation. As noted above, Global NAPs reserves all of the arguments it has made concerning the Commission's authority over this matter. Nevertheless, it has indicated a willingness to proceed before the Commission, at least at this time. Global NAPs also raised the

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<sup>2</sup> It remains open until all independent ILECs are providing access to Hub-PRI service, at which time Brooks must terminate any then-existing customers, and the NANPA must reclaim the 46 NXX codes.

compensation issue in a petition for arbitration recently filed pursuant to section 252 of the 1996 TelAct (46 U.S.C. § 252), but Global NAPs and Verizon have agreed that the issue is more appropriately considered in this separate investigation.

Because Global NAPs has indicated that it would be willing to gather traffic from throughout the state using a single code (rather than multiple codes nominally assigned throughout the state, as with Brooks), the investigation initially will focus on the compensation issue.

During a phone conference held on September 20, 2002, the parties agreed to file briefs on October 21 that will address a significant general issue concerning compensation. That issue is whether the Commission should order Verizon to provide a wholesale equivalent of the Hub-PRI service that would provide unbundled components of the service to other carriers, such as to Global NAPs.<sup>3</sup> In addition, the parties will comment on the specific proposal for such a service described by the Advisory Staff at a Technical Conference held on July 18, 2002, and in a written outline later distributed to the parties. Under that proposal, Verizon's pricing for the service would be flat-rated and based on similar costing methodology used for Hub-PRI service pricing, which we understand to be "long-run marginal cost."<sup>4</sup>

In this Investigation, the primary initial issue will be the pricing for the service described above or for other alternatives that the parties may propose.

Accordingly, we

1. OPEN an Investigation:

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<sup>3</sup> Global NAPs is authorized by the Commission only to provide local exchange service. It may provide facilities-based local service only in the Portland area, although it may provide resold local service elsewhere. In light of our findings in the *Brooks Investigation* that traffic from outside the Portland local calling area (as defined by Verizon's tariff) is interexchange, not local, it will be necessary for Global NAPs to apply for and receive approval to provide interexchange service in order to be a customer for any wholesale service that gathers traffic from outside the Portland calling area that we might order in this proceeding.

<sup>4</sup> In the *Brooks Investigation*, we ordered Verizon to base its pricing for the service on "long-run marginal cost." Verizon proposed prices, which it did not expressly characterize as "long-run marginal cost." We approved the rates primarily on the basis of acceptability, in that no party (including potential ISP customers) objected, and we made no specific findings about any cost basis for the rates.

- (a) Into the availability and pricing for wholesale services that to be offered by Verizon and other incumbent local exchange carriers in Maine would offer to other carriers for the transport and collection of internet traffic; and
- (b) To the extent necessary, into the proposed use of NXX codes by Global NAPs and jurisdictional questions raised by Global NAPs; and

## 2. ORDER

- (a) that materials filed in Docket No. 98-758 (the Brooks investigation) since March of 2002 that relate to issues involving plans and activities by Global NAPs as described in this Notice, and the transcript of the technical conference held on July 18, 2002, shall be transferred to this case; and
- (b). The parties participating in Docket No. 98-758 as of the date of this Order shall be parties in this proceeding unless a party notifies the Commission that it does not wish to participate.<sup>5</sup>

Dated at Augusta, Maine, this 8th day of October, 2002.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Nugent  
   Diamond

COMMISSIONER ABSENT:              Welch

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<sup>5</sup> Those parties are: Global NAPs, Verizon, Brooks, Sprint, the Public Advocate, the Telephone Association of Maine, Mid-Maine Communications, Community Service Telephone Company and GWI. This Notice is being sent to all persons on the service list for the *Brooks* case (98-758), but if entity other than those listed above wish to participate as a party in this case, it should file a petition to intervene.